

HAROLD A. ARMANN

IBLA 73-402

Decided October 25, 1973

Appeal from decision of Utah State Office, Bureau of Land Management, denying a petition to reinstate a terminated oil and gas lease.

Affirmed.

Oil and Gas Leases: Reinstatement! ! Oil and Gas Leases: Rentals

An oil and gas lease terminated by operation of law for failure to pay the advance rentals on time can only be reinstated when the lessee shows that his failure to pay the rental on or prior to the anniversary date was justifiable or not due to a lack of reasonable diligence.

APPEARANCES: Harold A. Armann, pro se.

OPINION BY MRS. THOMPSON

Harold A. Armann appeals from the decision of the Utah State Office, Bureau of Land Management, which refused to reinstate his oil and gas lease U-14032 B.

The Act of July 29, 1954, 68 Stat. 585, amending section 31 of the Mineral Leasing Act of 1920, 30 U.S.C. § 188(b) (1970), provides that an oil and gas lease will terminate by operation of law if the annual rental is not paid on or before the anniversary date of the lease. Section 31 of the Mineral Leasing Act was further amended by the Act of May 12, 1970, 84 Stat. 206, 30 U.S.C. § 188(c) (1970), to allow reinstatement of a terminated lease upon a lessee's timely petition. The lessee, however, must show that the failure to pay on time "was either justifiable or not due to a lack of reasonable diligence on the part of the lessee." Id. The State Office, in denying the lessee's petition to reinstate the lease, found that the delay in filing was not justifiable, but was due to a lack of reasonable diligence. We agree.

The rental payment due date was May 1, 1973. Appellant's envelope containing the payment was postmarked May 1 at Cleveland, Ohio, and received in the Bureau's Office on May 3, 1973.

Appellant asserts in his appeal that the late payment was caused by his moving from Illinois to Ohio. He asserts: (1) that the courtesy notice of payment due from the Bureau of Land Management was not received until "the end of April," probably because of his moving, and that he thus did not have time to send payment by May 1; and (2) that his personal papers, including those relating to the lease, were in storage during this period, and were thus unavailable to him.

With respect to his first argument, non! receipt of a courtesy notice does not constitute a justifiable reason for making a late payment. Louis J. Patla, 10 IBLA 127, 128 (1973). Consequently, receipt of the notice immediately before the payment date also is no justification for late payment.

In support of his second argument, appellant asserts that because his personal papers were in storage and unavailable to him, he "had no idea where to write for any information so [he] could make annual payment." Such circumstances fall far short of the definition of "justifiable" failure of timely payment set out in Louis Samuel, 8 IBLA 268, 274 (1972):

Congress by the word "justifiable" was adverting to a limited number of cases where, owing to factors ordinarily outside of the individual's control, the reasonable diligence test could not be met.

The appellant has not shown in what way the packing and shipment, and thus the subsequent unavailability of the papers, was due to factors outside his control, nor has he shown that by the exercise of due diligence he could not have found out the relevant information and made a timely payment of the rental.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the Utah State Office denying the petition for reinstatement is affirmed.

Joan B. Thompson  
Member

We concur:

Edward W. Stuebing  
Member

Martin Ritvo  
Member

